

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO**

DAVID ECKERT,

Plaintiff,

v.

Cause No. 1:13-CV-00727

**THE CITY OF DEMING,
DEMING POLICE OFFICERS BOBBY OROSCO,
ROBERT CHAVEZ, and OFFICER HERNANDEZ,
HILDAGO [SIC]¹ COUNTY; HILDAGO [SIC]
COUNTY SHERIFF OFFICERS DAVID ARREDONDO,
ROBERT RODRIGUEZ, and PATRICK GREEN;
DEPUTY DISTRICT ATTORNEY DANIEL DOUGHERTY,
GILA REGIONAL MEDICAL CENTER,
ROBERT WILCOX, M.D., and OKAY H. ODOCHA, M.D.,**

Defendants.

COUNTY DEFENDANTS' ANSWER TO COMPLAINT

Defendants Hidalgo County, Hidalgo County Sheriff Officers David Arredondo, Robert Rodriguez and Patrick Green (hereinafter "County Defendants") by and through their counsel of record, HOLT MYNATT MARTINEZ P.C. (Damian L. Martinez, Blaine T. Mynatt) answer Plaintiff David Eckert's Complaint as follows:

JURISDICTION AND VENUE

County Defendants admit that jurisdiction and venue are proper.

¹ Plaintiff's Complaint misspells Hidalgo County and although technically a violation of Rule 10 of the Federal Rules of Civil Procedure, Defendant Hidalgo County and Hidalgo County Sheriff's Department Officers David Arredondo, Robert Rodriguez and Patrick Green, as well as undersigned counsel assume that Plaintiff will amend the caption of his Complaint providing the proper spelling for Hidalgo County.

PARTIES

1. County Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 1 of the Complaint and therefore, deny the same.

2. County Defendants admit the allegations contained in paragraph 2 of the Complaint.

3. County Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraphs 3, 4 and 5 of the Complaint and therefore, deny the same.

4. County Defendants admit the allegations contained in paragraphs 6, 7, 8 and 9 of the Complaint.

5. County Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraphs 10, 11, 12 and 13 of the Complaint and therefore, deny the same.

FACTUAL BACKGROUND

September 6, 2012 Search:

6. County Defendants admit the allegations contained in paragraphs 14 and 15 of the Complaint.

7. County Defendants deny the allegations contained in paragraphs 16 and 17 of the Complaint.

8. County Defendants admit the allegations contained in paragraph 18 of the Complaint.

9. County Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraphs 19 and 20 of the Complaint and therefore, deny the same.

10. County Defendants admit the allegations contained in paragraphs 21, 22 and 23 of the Complaint.

11. County Defendants deny the allegations contained in paragraphs 24 and 25 of the Complaint.

12. County Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 26 of the Complaint and therefore, deny the same.

13. County Defendants deny the allegations contained in paragraphs 27 and 28 of the Complaint.

14. County Defendants admit the allegations contained in paragraphs 29, 30 and 31 of the Complaint.

January 2, 2013 Traffic Stop

15. County Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraphs 32, 33, 34, 35, 36, 37, 38 and 39 of the Complaint and therefore, deny the same.

16. County Defendants deny the allegations contained in paragraph 40 of the Complaint as they relate specifically to Defendant Arredondo. County Defendants, however, do admit the allegations contained in paragraph 40 of the Complaint as they relate to Defendant Green.

17. County Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 41 of the Complaint and therefore, deny the same.

18. County Defendants deny the allegations contained in paragraph 42 of the Complaint as they relate only to Defendant Arredondo and affirmatively state that Defendant Arredondo was not involved in the January 2, 2013 traffic stop, nor was he in Deming on that date. With respect to the allegations made against Defendant Orosco, those allegations do not appear to be directed towards any of the County Defendants, however, to the extent those allegations are made against other County Defendants, they are denied.

19. County Defendants deny the allegations in paragraph 43 of the Complaint.

20. County Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraphs 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57 and 58 of the Complaint and therefore, deny the same.

January 2, 2013 X-ray and Anal Cavity Search Under facially Invalid Warrant

21. County Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraphs 59, 60, 61, 62, 63, 64, 65, 66, 67, 68 and 69 of the Complaint and therefore, deny the same.

January 2, 2013–January 3, 2013 Warrantless Detention, Second Rectal Search, Three Enemas, Second X-Ray and Colon Search

22. County Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraphs 70, 71, 72, 73, 74, 75, 76, 77, 78, 79, 80, 81, 82, 83, 84, 85, 86, 87, 88, 89, 90, 91, 92, 93, 94, 95, 96, 97, 98, 99, 100, 101, 102, 103, 104, 105, 106, 107, 108, 109, 110, 111 and 112 of the Complaint and therefore, deny the same.

COUNT I – UNREASONABLE SEARCH AND SEIZURE
(SEPTEMBER 6, 2012 TRAFFIC STOP)
(AGAINST DEFENDANT RODRIGUEZ)

23. County Defendants admit the allegations contained in paragraph 113 of the Complaint.
24. County Defendants deny the allegations contained in paragraphs 114, 115, 116, 117, 118, 119, 120 and 121 of the Complaint.

COUNT II – FIRST AMENDMENT RETALIATION
(SEPTEMBER 6, 2012 TRAFFIC STOP)
(AGAINST DEFENDANT RODRIGUEZ AND DEFENDANT HIDALGO COUNTY)

25. County Defendants deny the allegations contained in paragraph 122 of the Complaint.
26. The statements contained in paragraph 123 of the Complaint are a legal conclusion, to which a response is not required. However, to the extent a response is required, the County Defendants deny the statements made in paragraph 123 of the Complaint.
27. County Defendants deny the allegations made in paragraphs 124, 125 and 126 of the Complaint.

COUNT III – UNREASONABLE SEARCH AND SEIZURE
(JANUARY 2, 2013 TRAFFIC STOP RE: ARREST)
(AGAINST DEFENDANT HIDALGO COUNTY, DEFENDANT CITY OF DEMING
AND THE CORRESPONDING POLICE OFFICERS)

28. County Defendants deny the allegations contained in paragraphs 127, 128, 129, 130, 131, 132, 133, 134, 135 and 136 of the Complaint.

COUNT IV – UNREASONABLE SEARCH AND SEIZURE
(JANUARY 2, 2013 TRAFFIC STOP RE: WARRANT)

(AGAINST DEFENDANT CITY OF DEMING, DEFENDANT CHAVEZ, DEFENDANT HERNANDEZ, DEFENDANT DOUGHERTY, DEFENDANT OROSCO, AND DEFENDANT ARREDONDO)

29. The allegations made in paragraph 137 of the Complaint do not appear to be directed at any of the County Defendants, however, to the extent the allegations in paragraph 137 can be construed against any of the County Defendants, those allegations are denied.

30. County Defendants deny the allegations contained in paragraph 138 of the Complaint.

31. The allegations made in paragraphs 139, 140, 141, 142, 143, 144, 145, 146, 147, 148, 149, 150, 151 and 152 do not appear to be directed at any of the County Defendants, however, to the extent the allegations in those paragraphs can be construed against any of the County Defendants, those allegations are denied.

COUNT V – UNREASONABLE SEARCH AND SEIZURE
(JANUARY 2, 2013 TRAFFIC STOP RE: “LEO” AND DEFEDNANT GREEN)

32. County Defendants deny the allegations contained in paragraphs 153, 154, 155, 156, 157, 158, 159 and 152 (sic) of the Complaint.

COUNT VI – UNREASONABLE SEARCH AND SEIZURE
(JANUARY 2, 2013 FIRST X-RAY)
(AGAINST DEFENDANTS CITY OF DEMING, CHAVEZ, HERNANDEZ, WILCOX AND GILA REGIONAL MEDICAL CENTER)

33. The allegations contained in paragraphs 153 (sic), 154 (sic), 155 (sic), 156 (sic), 157 (sic), 158 (sic), and 159 (sic) of the Complaint do not appear to be directed at any of the County Defendants, however, to the extent the allegations contained in those paragraphs may be construed to be against the County Defendants, they are denied.

COUNT VII – UNREASONABLE SEARCH AND SEIZURE
(JANUARY 2, 2013 TRAFFIC STOP RE: FIRST AND SECOND DIGITAL
PENETRATIONS)
(AGAINST CITY OF DEMING, CHAVEZ, HERNANDEZ, WILCOX, ODOCHA AND
GILA MEDICAL CENTER)

34. The allegations found in paragraphs 160 (sic), 161 (sic), 162 (sic), 163 (sic), 164 (sic), 165 (sic), 166 (sic) and 167 (sic) of the Complaint do not appear to be made against any of the County Defendants, however, to the extent that any of the allegations made in those paragraphs may be construed to be made against the County Defendants, they are denied.

COUNT VIII – UNREASONABLE SEARCH AND SEIZURE
(JANUARY 2, 2013 TRAFFIC STOP RE: FIRST, SECOND AND THIRD ENEMAS)
(AGAINST DEFENDANT CITY OF DEMING, CHAVEZ, WILCOX, ODOCHA AND
GILA MEDICAL CENTER)

35. The allegations found in paragraphs 169 (sic), 170 (sic), 171 (sic), 172 (sic), 173 (sic), 174 (sic), 175 (sic), 176 (sic), 177 (sic), 178 (sic), 179 (sic) do not appear to be made against the County Defendants, however, to the extent that any of the allegations made in those paragraphs may be construed to be made against the County Defendants, they are denied.

COUNT IX – UNREASONABLE SEARCH AND SEIZURE
(JANUARY 2, 2013 TRAFFIC STOP RE: SECOND X-RAY)
(AGAINST DEFENDANTS CITY OF DEMING, CHAVEZ, HERNANDEZ, WILCOX,
ODOCHA, AND GILA MEDICAL CENTER)

36. The allegations found in paragraphs 180 (sic), 181 (sic), 182 (sic), 183 (sic), 184 (sic), 185 (sic), 186 (sic) and 187 (sic) do not appear to be made against the County Defendants, however, to the extent that any of the allegations made in those paragraphs may be construed to be made against the County Defendants, they are denied.

**COUNT X – UNREASONABLE SEARCH AND SEIZURE
(JANUARY 2, 2013 TRAFFIC STOP RE: COLONSCOPY)**
**(AGAINST DEFENDANTS CITY OF DEMING, CHAVEZ, HERNANDEZ, WILCOX,
ODOCHA, AND GILA MEDICAL CENTER)**

37. The allegations found in paragraphs 188 (sic), 189 (sic), 190 (sic), 191 (sic), 192 (sic), 193 (sic), 194 (sic), 195 (sic), and 196 (sic) do not appear to be made against the County Defendants, however, to the extent that any of the allegations made in those paragraphs may be construed to be made against the County Defendants, they are denied.

**COUNT XI – MUNICIPAL LIABILITY AND VIOLATION OF DUE PROCESS
(JANUARY 2, 2013 TRAFFIC STOP)**
(AGAINST ALL DEFENDANTS)

38. County Defendants deny the allegations contained in paragraphs 197 (sic), 198 (sic), 199 (sic), 200 (sic), 201 (sic), 202 (sic), 203 (sic), 204 (sic), 205(sic), 206 (sic), 207 (sic), 208 (sic), 209 (sic) and 210 (sic). Additionally the County Defendants affirmatively state that no individual employed by Hidalgo County pulled Plaintiff over on January 2, 2013.

COUNT XII – NEGLIGENCE
(AGAINST DEFENDANTS GILA MEDICAL CENTER, WILCOX AND ODOCHA)

39. The allegations found in paragraphs 207 (sic), 208 (sic), 209 (sic) and 210 (sic) do not appear to be made against the County Defendants, however, to the extent that any of the allegations made in those paragraphs may be construed to be made against the County Defendants, they are denied.

COUNT XIII – LACK OF INFORMED CONSENT
(AGAINST DEFENDANT GILA MEDICAL CENTER, WILCOX AND ODOCHA)

40. The allegations found in paragraphs 211 (sic), 212 (sic), 213 (sic), 214 (sic), 215 (sic), and 216 (sic) do not appear to be made against the County Defendants, however, to the

extent that any of the allegations made in those paragraphs may be construed to be made against the County Defendants, they are denied.

**COUNT XIV – VIOLATION OF THE UNFAIR PRACTICES ACT
(AGAINST DEFENDANT GILA MEDICAL CENTER, WILCOX AND ODOCHA)**

41. The allegations found in paragraphs 217 (sic), 218 (sic), 219 (sic), 220 (sic), 221 (sic), 222 (sic) and 223 (sic) do not appear to be made against the County Defendants, however, to the extent that any of the allegations made in those paragraphs may be construed to be made against the County Defendants, they are denied.

**COUNT XV – BATTERY
(AGAINST DEFENDANTS CITY OF DEMING, CHAVEZ, HERNANDEZ, WILCOX,
ODOCHA AND GILA MEDICAL CENTER)**

42. The allegations found in paragraphs 224 (sic), 225 (sic), 226 (sic), 227 (sic) and 228 (sic) do not appear to be made against the County Defendants, however, to the extent that any of the allegations made in those paragraphs may be construed to be made against the County Defendants, they are denied.

**COUNT XVI – FALSE IMPRISONMENT
(AGAINST DEFENDANT CITY OF DEMING, CHAVEZ, HERNANDEZ, WILCOX,
ODOCHA AND GILA MEDICAL CENTER)**

43. The allegations found in paragraphs 229 (sic), 230 (sic), 231 (sic), 232 (sic), 233 (sic) and 234 (sic) do not appear to be made against the County Defendants, however, to the extent that any of the allegations made in those paragraphs may be construed to be made against the County Defendants, they are denied.

AFFIRMATIVE DEFENSE NO. 1

Plaintiffs have failed to state a claim upon which relief can be granted as to Count II of the Complaint.

AFFIRMATIVE DEFENSE NO. 2

County Defendants are entitled to qualified immunity as it relates to Count II of the Complaint.

AFFIRMATIVE DEFENSE NO. 3

Plaintiffs have failed to state a claim upon which relief can be granted under Count III of the Complaint.

AFFIRMATIVE DEFENSE NO. 4

Plaintiffs have failed to state a claim upon which relief can be granted under Count IV of the Complaint against Defendant Arredondo.

AFFIRMATIVE DEFENSE NO. 5

Plaintiffs have failed to state a claim upon which relief can be granted under Count XI of the Complaint against County Defendants.

AFFIRMATIVE DEFENSE NO. 6

County Defendants reserve the right to assert additional affirmative defenses which may become available during discovery.

WHEREFORE, having answered the Plaintiff's Complaint, County Defendants respectfully request that Plaintiffs' Complaint as it relates specifically to the County Defendants be dismissed and for such other and further relief as the Court may deem just and proper under the circumstances.

Respectfully submitted,

HOLT MYNATT MARTÍNEZ P.C.

By:

DAMIAN L. MARTÍNEZ
P.O. Box 2699
Las Cruces, NM 88004-2699
(575) 524-8812

CERTIFICATE OF SERVICE

I hereby certify that on the 17th day of September 2013, I filed the foregoing electronically through the CM/ECF system, which caused the following parties or counsel to be served by electronic means, as more fully reflected on the Notice of Electronic Filing:

Joseph P. Kennedy (jpk@civilrightslawnmexico.com)

I further certify that a true and correct copy of the foregoing pleading was mailed to the following con the 17th day of September 2013:

Tony Ortiz
2011 Botulph Ste. 200
Santa Fe NM 87505

DAMIAN L. MARTÍNEZ